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In re Application of:
SHARMA, Ravi, Ivan
U.S. Application No.: 10/528,164
PCT No.: PCT/US2004/024486
International Filing Date: 26 July 2004
Priority Date: 25 July 2003
Atty Docket No.: 741038.1001
For: INVERTED KEYBOARD
INSTRUMENT AND METHOD FOR
PLAYING THE SAME

DECISION ON RENEWED
PETITION TO WITHDRAW
HOLDING OF ABANDONMENT
(37 CFR 1.181) AND PETITION
FOR REVIVAL (37 CFR 1.137(b))

This decision is issued in response to the "Applicant's Reply To Decision On Petition To Withdraw Holding Of Abandonment And Request For Consideration" filed 26 April 2007 and supplemented on 16 May 2007.

The 16 May 2007 supplement included payment of the required small entity petition fee for the petition under 37 CFR 1.137(b); no petition fee is required for the renewed petition under 37 CFR 1.181.

BACKGROUND

The background for this application was set forth in the decision mailed herein on 12 January 2007. In that decision, applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment was dismissed without prejudice based on applicant's failure to provide an adequate showing that payment of the basic national fee was submitted prior to the expiration of the thirty-month deadline. The decision also stated that the petition for revival under 37 CFR 1.137(b) filed by applicant had not been considered on the merits, based on applicant's failure to submit the required petition fee.

On 26 April 2007, applicant filed "Applicant's Reply To Decision On Petition To Withdraw Holding Of Abandonment And Request For Consideration," considered herein in part as a renewed petition under 37 CFR 1.181.

On 16 May 2007, applicant filed a supplemental response that included a credit card payment form with respect to the petition fee for the petition for revival under 37 CFR 1.137(b).

DISCUSSION

A. Renewed Petition To Withdraw Abandonment Under 37 CFR 1.181

Pursuant to 37 CFR 1.495(b), the present application became abandoned for failure to submit the basic national fee prior to the expiration of thirty months from the priority date. As set forth in the previous decision, in order for the abandonment to be withdrawn under 37 CFR 1.181, applicant is required to provide "an acceptable showing that applicant filed the basic national fee herein prior to the expiration of the thirty-month deadline on 25 January 2006." The present submission does not include any additional evidence showing that the required basic national fee was timely filed, nor does petitioner maintain that such fee was timely paid. Accordingly, the renewed petition under 37 CFR 1.181 for withdrawal of the holding of abandoned is properly dismissed.

Petitioner argues that the holding of abandonment should be withdrawn because of the USPTO's purported "pattern of misinformation" with respect to the status of this application and failure to provide applicant with timely notice that the basic national fee had not been received. To grant petitioner's request would require waiver of the timing requirements under 37 CFR 1.495(b). However, petitioner has neither petitioned under 37 CFR 1.183 to waive the provisions of 37 CFR 1.495(b) nor paid the petition fee required under 37 CFR 1.183. Accordingly, consideration of waiver of the requirements of 37 CFR 1.495(b) will not be treated herein.

B. Petition For Revival Under 37 CFR 1.137(b)

The 16 May 2007 supplement filed by applicant here included payment of the small entity petition fee required for consideration of the petition for revival of an unintentionally abandoned application under 37 CFR 1.137(b) filed 20 November 2006.¹

Applicant's statement in the petition for revival that "the entire delay in filing the required reply from the due date of the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

Applicant has now submitted the basic national fee, and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application pursuant to 37 CFR 1.137(b) is granted as to the United States of America.

CONCLUSION

Applicant's renewed petition for withdrawal of the holding of abandonment under 37 CFR 1.181 is **DISMISSED**.

¹ Applicant asserts that the fee submittal was duplicative, in that the previously filed credit card payment form authorized a charge for "\$950 + any additional fees required." However, pursuant to 37 CFR 1.23(b): "Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge The Office will not accept a general authorization to charge fees to a credit card." Thus, applicant's general authorization to charge the credit card for "any additional fees required" was insufficient to permit the USPTO to charge applicant the petition fee for the petition under 37 CFR 1.137(b).

Applicant's petition for revival of the application under 37 CFR 1.137(b) is **GRANTED**.

This application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date.



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